



Napoleon Cardenas

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The robbers took three bags of Tahitian black pearls with a retail value of about \$1.5 million.

As the robbers fled, their car crashed into the hotel and then headed down Queens Boulevard. But the crash flattened one of the car's tires and about a mile away, the robbers abandoned the vehicle and came across an off-duty police officer who was parking his car.

The robbers struggled with the officer who fired a shot, but then was knocked unconscious and his car was taken. One of the robbers was holding the gun when it discharged and was wounded in the hand.

Two of the jewelers were so shaken up they were taken to St. John's Queens Hospital for examination. While there, Napoleon Cardenas, 24, accompanied by his brother, Carlos, 23, came into the emergency room. Napoleon came for treatment of a gunshot in his hand. Police questioned him about the heist and the jewelers were allowed to view them, but no identification was made.

Five days after the robbery, on July 26, 1994, one of the jewelers, Ted Lee, telephoned police and said he believed that the Cardenas brothers were involved.

Before police could taken any action, Napoleon Cardenas, who was due to surrender to begin serving four months in prison for credit card fraud, fled to his native Dominican Republic.

Eight months after the robbery, two of the jewelers came back to New York from California and viewed Carlos Cardenas in a lineup. One identified Carlos Cardenas. Both brothers were charged with the robbery.

On May 1, 1996, Carlos Cardenas was convicted of first degree robbery, second degree robbery and grand larceny. He was sentenced to eight to 25 years in prison.

In 1997, Napoleon Cardenas surrendered to federal marshals in Colombia and was returned to the United States to serve his sentence for credit card fraud. New York authorities then moved to prosecute him for the robbery.

In the spring of 1999, Napoleon Cardenas went on trial. He was identified by Lee as well as the police officer, who said Cardenas was wounded in the hand when his gun discharged. Cardenas contended that he was not involved in the robbery and that he was at the hospital that night because he had accidentally shot himself with a .380-caliber handgun.

In fact, Cardenas's girlfriend still had the bullet and bullet fragments still

State: New York

County: Queens

Most Serious Crime: Robbery

Additional Convictions: Assault

Reported Crime Date: 1994

Convicted: 1999

Exonerated: 2007

Sentence: 15 to 30 years

Race: Hispanic

Sex: Male

Age: 24

Contributing Factors: Mistaken Witness ID

Did DNA evidence contribute to the exoneration? No

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remained in Cardenas's hand. Neither the prosecution nor the police investigated the claim.

Napolean Cardenas was convicted and sentenced to 15 to 30 years in prison for first degree robbery and second degree assault.

In 2002, Napolean Cardenas wrote a letter to the Legal Aid Society asking for help. A Legal Aid attorney located the bullet and an analysis showed that it was aluminum while the police department ammunition issued at the time of the robbery was copper-jacketed.

March 2002, x-rays taken of Napolean Cardenas's hand showed fragments in his thumb, middle and index fingers. In September, 2005, surgery was performed on his hand to remove the fragments. An analysis of the fragments showed they were lead. Defense attorneys said that this suggested the bullet that hit Cardenas's hand was a hollow-point bullet. New York police bullets were not hollow-points.

The state opposed a motion for new trial and the case stalled until 2006 when, acting on leads provided by the defense, the prosecution located inmates prison terms on unrelated convictions who said that neither of the Cardenas brothers were involved in the robbery.

The Cardenas brothers took and passed polygraph tests. In January, 2007, the charges were dismissed and they were released from prison.

– Maurice Possley

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Cardenas Brothers

Queens County, New York
Date of Crime: July 21, 1994

When some jewelry vendors were returning to their hotel in Elmhurst from a gem show in Manhattan, four Latino men snatched three cases of Tahitian black pearls from them. The pearls were valued at \$1.5 million. As they escaped, the thieves attempted to carjack an off duty police officer. The officer managed to shoot his service weapon, a 9-millimeter Glock, before he was knocked unconscious. He later told detectives later that he thought he had hit a robber who was grabbing at the barrel of the gun.

That same night, Napoleon Cardenas accidentally shot himself in the hand with a .380-caliber semiautomatic pistol that he had been showing to two visitors at his girlfriend's apartment. He showed up screaming in pain at the same hospital that the off-duty officer and one of the jewelry vendors were being treated. A detective put Napoleon in a lineup, but none of the robbery victims identified him. A friend cleaned up the blood in his girlfriend's apartment. The police never searched the site.

Napoleon was due to serve a four-month sentence for credit card fraud. Days before it was to begin, he fled to the Dominican Republic. In his absence, one of the vendors called a detective days after the crime, saying he could now identify Napoleon as one of the robbers. The police visited Napoleon's brother, Carlos Cardenas, to ask about him and they began to suspect that Carlos had been involved as well. When the jewelry vendors returned to New York from California a year later, the police put Carlos in a lineup. One of the vendors chose someone else. Another chose Carlos.

At Carlos's trial, a jewelry vendor identified him. With the coincidence of his brother's gunshot wound, Carlos was convicted and sentenced to 8 to 25 years in prison. A year later Napoleon surrendered to federal marshals in Columbia. He served his credit card fraud sentence and was tried for the jewelry heist. After the off-duty officer and a jeweler identified him, he was convicted and sentenced to 15 to 30 years in prison.

Napoleon's trial lawyer did not investigate his alibi. Napoleon's friend, Eddie Padilla, who had cleaned up the blood after Napoleon shot himself, had the bullet jacket from the bullet Napoleon fired. It had an aluminum casing unlike the police ammunition fired during the jewelry heist, which had a copper casing. After years of imprisonment, Napoleon began to think that he had held proof of his innocence in his hand all along. In 2005, he had surgery to remove bullet fragments from his hand. The fragments removed were of entirely of lead, which did not prove helpful. Nevertheless, the surgery convinced the DA to take

a second look at the case. The DA's investigator became convinced from informants that others were responsible for the theft. After Napoleon and Carlos were given and passed lie detector tests, the pair were exonerated and released in 2007. [4/07]

Reference: *New York Times*

Posted in: Victims of the State, Brooklyn-Queens-Staten Island Cases



February 25, 2007

Evidence in Inmate's Hand, Justice in His Sights

By ELLEN BARRY

On a September afternoon in 2005, with a prison guard standing beside the operating table and another outside the door, a surgeon cut into the left hand of inmate No. 99A2254.

The doctor was trying to find fragments of a bullet among the tiny veins and ligaments of Napoleon Cardenas's middle finger. Mr. Cardenas had been warned that removing them could cause nerve damage. Another surgeon had balked at performing the operation, saying it could violate the Hippocratic oath.

But Mr. Cardenas did not care. He was convinced that under the pale scars lay evidence that would topple two convictions in a 1994 jewel heist: his and his younger brother's. Between them, they had already served 14 years in prison for the crime. Cut off my fingers if you need to, he said.

Mr. Cardenas's lawyers waited anxiously outside as the surgeon, using forceps, removed two pieces of metal. The results would not, in themselves, convince the Queens district attorney, [Richard A. Brown](#), that the brothers were innocent. But Mr. Brown's investigator was impressed by Mr. Cardenas's eagerness to have the operation. That and a growing pile of new evidence were enough to prompt the district attorney's office to start its own yearlong investigation.

On Jan. 18, Mr. Brown asked a judge to vacate the convictions of Napoleon Cardenas and his brother Carlos in the jewel heist. In a statement, Mr. Brown said his prosecutors were "always prepared to take a hard look at a case — even post-conviction — to make certain that justice has been done."

Steven Silberblatt, one of half a dozen [Legal Aid Society](#) lawyers who worked to overturn the Cardenas brothers' convictions, put it this way: "Sometimes circumstances provide their own lie-detector test. When someone is willing to lose the use of his hand, you get the feeling they're probably telling the truth."

The case began on the evening of July 21, 1994. Police officers all over Queens were looking for four Latino men suspected of snatching three cases of Tahitian black pearls from vendors returning to their hotel in Elmhurst from a gem show in Manhattan. The vendors estimated the jewels' value at \$1.5 million.

As they escaped, the thieves rushed at a man in his driveway, demanding his car. The man was an off-duty police officer, and he managed to shoot his service weapon, a 9-millimeter Glock, before he was knocked unconscious. He told detectives later that he thought he had hit a robber who was grabbing at the barrel of the gun.

Within hours, police detectives converged on the emergency room at St. John's Queens Hospital, where one

of the jewelry vendors and the off-duty police officer were being treated. Napoleon Cardenas, then 24, was there, too, with his brother Carlos, 23. It was hard to miss Napoleon; he was screaming. He was being treated for a gunshot wound.

When he was questioned about his injury that night, Mr. Cardenas answered haltingly, arousing a detective's suspicion. He had shot himself, he said, in his girlfriend's living room, while handling a .380-caliber semiautomatic pistol that he had been showing to two visitors. He had no license for the gun.

The detective put Mr. Cardenas in a lineup, but when none of the robbery victims made a positive identification, she released him. A friend cleaned up the blood in his girlfriend's apartment. The police never searched the site.

It took a few days for Mr. Cardenas to realize he might still be a suspect. He was due to serve a four-month sentence for credit-card fraud. Days before it was to begin, Mr. Cardenas fled to the Dominican Republic — a move that would damage his and his brother's defense.

"I got scared," he said recently. He had a seriously injured hand, he said, adding: "I was so skinny. I was watching these movies about what happens to people" in prison.

In his absence, the case against him took on a new life. One of the vendors called a detective days after the crime, saying he could now identify Mr. Cardenas as one of the robbers. The police visited Carlos Cardenas to ask about his brother, and began to suspect that Carlos had been involved. When the jewelry vendors returned to New York from California a year later, the police put Carlos in a lineup. One of the vendors chose someone else. Another chose Carlos.

At Carlos's trial, one of the jewelry salesmen identified him as one of the robbers. There was no physical evidence linking Carlos to the crime. But the prosecutor noted dryly that Napoleon's injury had occurred "coincidentally, I guess — just a major coincidence — with the same people, about the same time, about approximately the same area."

In May 1996, Carlos Cardenas was found guilty of first-degree robbery, second-degree robbery and grand larceny. He was sentenced to 8 1/3 to 25 years in prison.

A year later, Napoleon Cardenas surrendered in Colombia to federal marshals and returned to the United States to serve his sentence for credit-card fraud. When he was released, he faced trial in the jewel theft. In court, the off-duty police officer and one of the jewelry salesmen identified Mr. Cardenas. As in his brother's case, no physical evidence linked him to the crime, but the prosecutor noted the gunshot wound.

"You don't have a fingerprint to say 'I was there,' but everything else tells you he was there, including the bullet that went through his hand," the prosecutor told jurors. He compared the wound to dye packets rigged to explode on bank robbers.

Although Mr. Cardenas insisted that he could prove his innocence with ballistics evidence and alibi

witnesses, his lawyer, Michael C. Harrison, disagreed, and focused on discrediting the government's witnesses. In 1999, Napoleon Cardenas was convicted of first-degree robbery and second-degree assault, and sentenced to 15 to 30 years.

In 2002, with his legal remedies nearly exhausted, Mr. Cardenas wrote a stinging letter of introduction to Svetlana Kornfeind, a lawyer newly assigned to his case by the Legal Aid Society: he intended, he wrote, "to prove my claim in the courts as soon as I am given the opportunity. So, I want to ask you to be honest to yourself not to me but to yourself by telling me if you have the time or not to help me."

Ms. Kornfeind was taken aback. But she scheduled a meeting with him. "We had to investigate the possibility that he was right," she said.

Mr. Cardenas seemed to specialize in driving lawyers crazy. He wrote to his trial lawyer three times a week offering strategic advice. He placed calls from prison to the police in the 110th Precinct asking for documents; if they asked, he said he was a detective. He deliberately injured himself in prison to have X-rays taken of his hand, so he could be sure that the fragments of metal were still there, he said.

"I knew I had evidence in my hand," he said. "People would laugh at me. I'd sit there and proclaim I was a political prisoner."

Once in a while, he got a break. An old friend, Eddie Padilla, visited him as he was awaiting trial on the robbery charges. They were talking about friends from the neighborhood, Mr. Cardenas recalled, when Mr. Padilla brightened. Did Napoleon know he still had part of that bullet?

Mr. Padilla had helped clean up blood in the apartment where Mr. Cardenas, still in shock, had pulled the bullet jacket out of his wound. Mr. Padilla still had the jacket. At parties, he would take it out to show friends.

Ms. Kornfeind began to construct an argument to overturn the conviction, citing the newly discovered evidence and contending that Mr. Harrison, the trial attorney, had failed to investigate Mr. Cardenas's alibi. Mr. Harrison did not respond to a request for comment for this article.

Ms. Kornfeind had the bullet jacket analyzed, and contended that the results bolstered Mr. Cardenas's story: while the Police Department then issued full-metal, copper-jacketed ammunition, this jacket was aluminum, which peeled back on contact. Full-metal ammunition would have passed through the hand intact. The tissue that dotted the jacket was his, a DNA test showed.

The next challenge was to see whether the fragments in Mr. Cardenas's hand matched the bullet jacket.

Using a tourniquet, doctors at Bellevue Hospital Center cut off the flow of blood to the hand; a "bloodless field" allows surgeons to more easily locate foreign bodies, nerves and tiny veins, said Dr. David W. Friedman, who supervised the operation. It turned out to be an easy task, since the shards were lodged above the bone, like splinters. They were removed through a tiny incision, wrapped in cotton and put in an evidence tube. The wound required only two stitches.

Ms. Kornfeind remembers “just sailing” across town to a crime laboratory, where the fragments would be analyzed. Traces of aluminum would suggest strongly that Mr. Cardenas had been shot with the hollow-point bullet; copper would back up prosecutors’ claim that he had been shot by a police service weapon.

In the end, the fragments were neither. They were shards of lead. Mr. Cardenas’s lawyers contended that they still supported his innocence, since hollow-point bullets, unlike full-metal bullets, break apart on contact, said Thomas A. Kubic, an instructor at the [John Jay College of Criminal Justice](#), who consulted on the case for the Legal Aid Society.

From the point of view of the district attorney, the ballistics evidence was inconclusive. At a hearing in 2005, a prosecutor said that the gunshot wound had not been at the center of the case against Mr. Cardenas, who was implicated by four witness identifications, “a series of lies he told hospital personnel on the night of the crime as to how he obtained the wound, and his flight from the country immediately after the crime.” But Mr. Cardenas’s eagerness to undergo surgery had made an impression.

The case wore on for months, while the district attorney’s investigator tracked down informants. One of them convinced the investigator that others were responsible for the jewel theft. In January of this year, both brothers passed polygraph tests. That was the final hurdle.

At the hearing where the brothers were exonerated, their father, Napoleon Cardenas Sr., a 74-year-old carpenter originally from Colombia, thanked Ms. Kornfeind and Denise Fabiano, who represented Carlos.

“These are two beautiful persons,” he said in an interview.

Steven Banks, attorney in chief for the Legal Aid Society, said the case showed how errors made early in an investigation get “compounded time and time again.”

“It never ceases to amaze me how random it is that people get caught up in the judicial system and the related bureaucracy and can be swallowed up,” Mr. Banks said.

On the day of the hearing, Ms. Kornfeind had been expecting “an explosion of something at the end,” or at least the sight of her client with his handcuffs off, running into his mother’s arms. But Napoleon Cardenas, now 36, would not be released for two days, while [immigration](#) officials cleared a deportation order. His brother Carlos, 35, like Napoleon a legal permanent resident, remains threatened with deportation, even though his conviction has been overturned.

Ms. Kornfeind woke up early the day after the hearing, planning to work on Napoleon Cardenas’s immigration case. She pulled up the Web site for the Eastern Correctional Facility in Ulster County, and typed the familiar identification number, 99A2254. A message flashed: No such person exists.

She typed in his name, and got the same message: No such person exists.

That’s when she realized what had happened. Her client was free.

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Carlos Cardenas

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Race: Hispanic

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